

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-MV/KK

RIO CHAMA STREAM SYSTEM

Section 7: Rio Brazos

**[PROPOSED] NOTICE AND ORDER TO SHOW CAUSE IN THE RIO BRAZOS
SUBSECTION OF SECTION 7 OF THE RIO CHAMA STREAM SYSTEM**

To: All Defendants in the Rio Brazos Subsection that Signed and Approved a Consent Order

You are hereby notified that the Court has entered an Order requiring you to file a Notice of Claim with the Court if you wish to make a claim to the use of water based on the Treaty of Guadalupe Hidalgo in the Rio Brazos Subsection. Only those defendants who signed and approved a Consent Order may file a Notice of Claim with the Court.

The Treaty of Guadalupe Hidalgo (“Treaty”) was signed on February 2, 1848, ending the war between the United States and Mexico. *See* TREATY OF PEACE, FRIENDSHIP, LIMITS, AND SETTLEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE MEXICAN REPUBLIC, 9 Stat. 922. By the terms of the Treaty, Mexico ceded lands to the U.S., including the lands of the Rio Brazos Subsection of Section 7 of the Rio Chama Stream System (“Brazos Subsection”). *Id.* Under the Treaty of Guadalupe Hidalgo, property rights that existed at the time of the signing of the Treaty were protected under American law. *Id.*

If you do not wish to make a claim to the use of water based on the Treaty of Guadalupe

Hidalgo, you do not have to do anything at this time. If you do wish to make a claim to the use of water based on the Treaty of Guadalupe Hidalgo, you must follow the steps laid out in this Notice.

HOW TO MAKE A CLAIM

1. File a Notice of Claim.

Enclosed with this Notice and Order to Show Cause is a form entitled **Notice of Claim to the Use of Water Based on the Treaty of Guadalupe Hidalgo in the Rio Brazos Subsection of Section 7 of the Rio Chama Stream System** (“Notice of Claim form”). If you have signed and approved a Consent Order in the Rio Brazos Subsection, and you wish to make a claim to the use of water based on the Treaty of Guadalupe Hidalgo, you must fill out the enclosed Notice of Claim form and file it with the Clerk of Court for the United States District Court for the District of New Mexico. Your Notice of Claim form may be filed in one of three ways:

1. In person at the federal courthouse in Albuquerque, or
2. By mail to the federal courthouse in Albuquerque, or
3. In person at the federal courthouse in Santa Fe.

Addresses for the federal courthouse in Albuquerque and the federal courthouse in Santa Fe are listed on the back of the Notice of Claim form. The completed form must be filed with the Court no later than 30 days from the date this Notice was mailed to you. The exact deadline for you to file your Notice of Claim is listed on the back of the Notice of Claim form. No Treaty-based claim will be considered by the Court if it is not timely filed with the Court.

Any Notice of Claim that does not include sufficient contact information, such as a current mailing address and phone number, may not be considered by the Court.

2. Make an Appointment to Meet and Confer with the State.

If you file a Notice of Claim with the Court, you will be contacted by the State to set up a meeting to discuss your claim. You must meet and confer with a representative of the State within 30 days of filing your Notice of Claim. If it is not convenient for you to travel to Santa Fe to meet

with the State's representative you may confer by phone, or you may request that the State's representative come to you.

At the meeting with the State, you must be prepared to discuss your Treaty-based claim, the evidence you wish to present to the Court in support of your claim, and a schedule for exchanging documents necessary for litigating your claim ("discovery"). You are required to use good faith in conferring with the State to develop a discovery plan that works for all parties and is not inconsistent with the Federal Rules of Evidence and Civil Procedure.

3. Proving your claim.

If, after conferring with the State, you decide to pursue a Treaty-based claim, the State will submit a written report to the Court outlining the discovery plan that has been agreed upon by you and the State. After receiving the discovery plan report, the Court will issue a scheduling order to guide the process for litigating your claim. You will be bound to follow any instructions, including deadlines, contained within the scheduling order for your claim.

4. Non-compliance.

If you fail to timely file a Notice of Claim, you may not later bring a claim to the use of water based on the Treaty of Guadalupe Hidalgo. If you timely file a Notice of Claim, but fail to meet and confer with the State within 30 days after mailing your Notice of Claim to the Court, you will receive notification from the State that the period for conferring has ended, and that if you do not meet and confer with the State within 21 days of the date of the notification, the State will move the Court to dismiss your Treaty-based claim.

This is your only opportunity to make a claim to the use of water based on the Treaty of Guadalupe Hidalgo in the Brazos Subsection. If you do not timely file a Notice of Claim with the Court, you may not later make a claim to the use of water based on the Treaty. If you do not follow the instructions in this Notice, your Treaty-based claim may be dismissed.

IT IS SO ORDERED.

KIRTAN KHALSA
UNITED STATES MAGISTRATE JUDGE